

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 1:23-cr-00654-JB

SHELDON CARLTON DAYE,

Defendant.

**ORDER REGARDING MOTION FOR *LAFLER/FRYE* HEARING**

**THIS MATTER** came before the Court on the United States’ Unopposed Motion for *Lafler/Frye* Hearing Before a United States Magistrate Judge, filed on September 16, 2024. Doc. 40. Judge James Browning granted the motion for a hearing. Doc. 41. The motion requested that a magistrate judge, presumably pursuant to Fed. R. Crim P. 59(a), conduct a *Lafler/Frye* hearing, and that the magistrate judge “make the prosecution’s proposed plea agreement a sealed exhibit at the hearing and verify that defendant and defense counsel discussed the terms of the proposed plea agreement before rejecting the United States’ proposed resolution.” Doc. 40 at 1–2. The Court held a hearing on the motion on September 30, 2024. Doc. 44. AUSA Mark Probasco appeared on behalf of the United States. *Id.* Sarah M. Gorman appeared on behalf of Defendant Sheldon Carlton Daye, who was personally present. *Id.*

Based on the representations of counsel and the testimony of Mr. Daye, the Court finds the following facts:

On July 22, 2024, Mr. Probasco emailed a proposed plea agreement to Ms. Gorman. Ms. Gorman went over the proposed plea agreement three times with Mr. Daye: once over the phone, and twice in person. The most recent time that she went over the plea agreement with Mr. Daye

was during the week of September 23, 2024. Ms. Gorman went over every page of the proposed plea agreement with Mr. Daye, and she conveyed both the advantages and disadvantages of accepting the proposed plea offer to Mr. Daye. Mr. Daye asked Ms. Gorman questions about the proposed plea agreement, and Ms. Gorman answered all his questions to his satisfaction. Ms. Gorman estimated that she and Mr. Daye spent about an hour and a half in total discussing the proposed plea agreement. Mr. Daye testified that he had enough time to discuss the proposed plea offer with Ms. Gorman, and he had plenty of time to consider the plea offer. He understood that it was up to him whether to accept the plea offer. He also understood that if he were to accept the government's proposed plea agreement, he could rely on the factual basis in the plea agreement and would not have to state aloud in open court the factual basis for the plea. Ms. Gorman informed Mr. Daye that if he decided to reject the proposed plea offer, he was unlikely to receive the same plea offer again. She also informed him that if he decided to reject the plea offer, his case likely would go to trial before a jury. After his discussions with Ms. Gorman and after considering the proposed plea agreement, Mr. Daye decided to reject the government's proposed plea agreement. Mr. Probasco, Ms. Gorman, and Mr. Daye all confirmed that Exhibit 1—a sealed exhibit attached to the clerk's minutes for the hearing—is an accurate copy of the proposed plea agreement that the government offered to Mr. Daye, and the proposed plea agreement that Ms. Gorman and Mr. Daye discussed at length.

After considering all the information and evidence presented at the hearing, the Court finds that Mr. Daye received the government's July 22, 2024, plea offer in the form of a proposed plea agreement, understood its terms and effects, independently and voluntarily rejected the offer after consulting with competent counsel, and understood that rejecting the offer likely would result in a jury trial.

**IT IS THEREFORE ORDERED** that the United States' Motion for *Lafler/Frye* Hearing is **GRANTED** to the extent that the Court held the hearing. The Court finds that the United States extended a formal plea offer to Mr. Daye on July 22, 2024, by email, that the offer was conveyed and explained to Mr. Daye in a timely manner, and, after consulting with his attorney, Mr. Daye knowingly and voluntarily rejected the plea offer.

  
LAURA FASHING  
U.S. MAGISTRATE JUDGE